IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 17866 of 2004(B)

PETITIONER:

1. B. BOSE, LEGAL ASSISTANT (SENIOR GRADE)
   LAW DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. MUHAMMED HUSSAIN, LEGAL ASSISTANT
   (SENIOR GRADE) LAW DEPARTMENT, SECRETARIAT,
   TRIVANDRUM.

3. K. DILIP KUMAR, LEGAL ASSISTANT
   (SENIOR GRADE), LAW DEPARTMENT,
   SECRETARIAT, TRIVANDRUM.

BY ADV. SRI.K.BABU THOMAS

RESPONDENTS:

1. STATE OF KERALA, REP. BY THE
   CHIEF SECRETARY TO THE GOVERNMENT,
   SECRETARIAT, TRIVANDRUM.

2. THE PRINCIPAL SECRETARY TO GOVERNMENT
   GENERAL ADMINISTRATION DEPARTMENT, AND CONVENOR
   DEPARTMENTAL PROMOTION COMMITTEE (LOWER)
   FOR LAW DEPARTMENT.

3. THE SECRETARY TO GOVERNMENT
   LAW DEPARATMENT, SECRETARIAT, TRIVANDRUM.

4. SRI.SITARAMA M., TYPIST GRADE I,
   (POSTED AS LEGAL ASSISTANT TRAINEE),
   LAW DEPARTMENT, SECRETARIAT, TRIVANDRUM.

5. SMT.C.H. CHITRAKUMARI, CONFIDENTIAL
   ASSISTANT, OFFICIAL LANGUAGE, LEGISLATIVE
   COMMISSION, (POSTED AS LEGAL ASSISTANT TRAINEE),
   LAW DEPARTMENT, SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. V.T.K. MOHAN
SRI.SAJU J.VALLYARA FOR R4
SRI. N. DHARMADAN (SR)
SRI.ELVIN PETER P.J. FOR R5
SMT.R.RANJINI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 17866 of 2004

APPENDIX

PETITIONERS EXHIBITS:

EXHIBIT-P1: TRUE COPY OF G.O (MS) NO.59/1998/LAW

EXHIBIT-P1(a): TRUE COPY OF G.O (MS) NO.170/9/LAW

EXHIBIT-P2: TRUE COPY OF G.O (MS) NO.129/2000/LAW

EXHIBIT-P3: TRUE COPY OF REPRESENTATION OF THE 1ST PETITIONER

EXHIBIT-P3(a): TRUE COPY OF REPRESENTATION OF THE 2ND PETITIONER

EXHIBIT-P3 (b): TRUE COPY OF REPRESENTATION OF THE 3RD PETITIONER

EXHIBIT-P4: TRUE COPY OF JUDGMENT IN W.P (C) NO.8405/2004

EXHIBIT-P5: TRUE COPY OF G.O (RT) NO.189/2001/LAW

EXHIBIT-P6: TRUE COPY OF G.O (RT) NO.456/2004/LAW.

EXHIBIT-P7: TRUE COPY OF G.O (RT) NO.3539/2004/GAD

EXHIBIT-P8: TRUE COPY OF G.O (RT) NO.1182/04/LAW

EXHIBIT-P9: TRUE COPY OF G.O (RT) NO.1236/04/LAW

RESPONDENTS EXHIBITS:

EXHIBIT R4 (a): PHOTOCOPY OF THE ORDER IN G.O (RT) NO.365/02/LAW DATED 5.6.2002 ISSUED BY THE GOVERNMENT

EXHIBIT R4 (b): PHOTOCOPY OF THE NOTIFICATION G.O (RT) NO.1679/2003/GAD DATED 7.3.2003 ISSUED BY THE GOVERNMENT

EXHIBIT R4 ©: PHOTOCOPY OF THE ORDER G.O (MS) NO.312/73/PD DATED 7.12.1973 ISSUED BY THE GOVERNMENT

EXT. R5 (a): TRUE COPY OF ORDER G.O (MS) NO.312/73/PD. DATED 7-12-1973

EXT.R5 (b): TRUE COPY OF CERTIFICATE DATED 22-11-2003 ISSUED BY THE P.S.C. TO THE PETITIONER

/TRUE COPY/

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 17866 OF 2004-B

JUDGMENT

The petitioners were Senior Grade Legal Assistants, working in the Law Department in the Administrative Secretariat, Thiruvananthapuram. During the pendency of the writ petition, they have been promoted as Section Officers in the said Department. They have approached this Court, mainly aggrieved by the posting of respondents 4 and 5 as Legal Assistant Grade II, in violation of the Special Rules governing appointment to the post and also the consequential promotion given to them to the post of Section Officer.

2. The brief facts of the case are the following. The method of appointment to the post of Legal Assistant Grade II is by direct recruitment through P.S.C or appointment from Assistant Tamil Translators and Assistant Kannada Translators or by appointment/promotion from any other category in the Kerala Secretariat Subordinate Service or transfer from any category in any Departments under the Government or in the service of the High Court of Kerala. The Special Rules prescribe that 50% of the vacancies shall

be filled up by direct recruitment and appointment from Assistant Tamil/Kannada Translators. Out of the remaining 50%, there shall be a further ratio of 3 : 2 between promotion from any other category in the Kerala Secretariat Subordinate Service and transfer from any category in any Departments under the Government or in the service of the High Court of Kerala. The petitioners would vehemently contend that appointment of Typists or Confidential Assistants is not a method provided in the Special Rules. But, in violation of the said provision of the Special Rules, by Ext.P5 order, the 4th respondent, who is a Grade I Typist, has been posted as Legal Assistant Trainee for a period of one year from 2.3.2001. The details of the training schedules are also contained in that order. By a similar order Ext.P6, the 5th respondent has already been posted as Legal Assistant Trainee. Later, when a select list of eligible persons for appointment to the post of Section Officer in the Law Department was published by Ext.P7 notification dated 25.5.2004, the 4th respondent was included from the category of Typists for appointment during the year 2004. Based on his inclusion in the select list, Ext.P8 order was passed by the Government, promoting the said

respondent as Section Officer. By Ext.P9 order, he has been assigned a rank in the cadre of Section Officers in between two promotees from the cadre of Senior Grade Legal Assistants. This Writ Petition was filed, challenging Exts.P5, P6, P7 and also Exts.P8 and P9 to the extent they concern the 4th respondent.

3. The petitioners point out that the respondents 4 and 5 were illegally posted as Legal Assistants and thereby they were able to steal a march over them in the matter of promotion to the post of Section Officer. It is further pointed that the petitioners joined the cadre of Legal Assistant Grade II in 1998, whereas respondents 4 and 5 joined that cadre only as per Exts.P5 and P6 in the years 2001 and 2004 respectively. So, they pray for quashing the aforementioned orders in favour of respondents 4 and 5.

4. The Government have filed a statement and respondents 4 and 5 have filed separate counter affidavits, supporting the impugned proceedings. They rely on Ext.R5(a) [G.O.(Ms) No.312/73/PD dated 7.12.1973] which prescribes the method of appointment to the post of Section Officer in the Law Department. The said order provides for a

ratio of 1 : 1 : 15 between Stenographers including those working as Office Superintendents, Typists including those working as Office Superintendents and Legal Assistants. The said order inter alia provides that Typists and Stenographers should be posted as Legal Assistants for a limited period of one year and they should clear the suitability test for appointment as Section Officer. Their performance as Legal Assistants will be relevant while considering their case for promotion. So, in the light of Ext.R5(a), the respondents 4 and 5 were posted as Legal Assistant Trainees, it is submitted. They continued to be in their parent cadre and they drew their salary in those posts. Only to gain experience, they were so posted. The same can in no way be described as an appointment in the normal sense and therefore, their postings cannot be condemned as an appointment made in violation of the Special Rules prescribing the qualifications, method and appointment to the post of Legal Assistant Grade II, submits respondents 4 and 5. The Government in its statement also support the above contentions of respondents 4 and 5. Respondents 4 and 5 also point out that both of them were appointed to the cadre of Typists/Confidential Assistants in the Law Department

before 1998. Therefore, they are seniors in service when compared to the writ petitioners, though in a different category.

5. Heard the learned counsel on both sides. The postings given to respondents 4 and 5 as per Exts.P5 and P6 orders are strictly in accordance with the terms of Ext.R5(a). There is no challenge to Ext.R5 (a) in this writ petition. Therefore, I find nothing illegal with Ext.P5 or Ext.P6 and the consequential steps taken by the competent authority to promote the beneficiaries of those orders. The petitioners proceeded on the footing that the postings made under Exts.P5 and P6 should be equated with regular appointment to the post of Legal Assistant Grade II. But, the said respondents were posted only as Trainees. Therefore, the very foundation of the case of the petitioners is shaky. The respondents 4 and 5 have been legally appointed for training as Legal Assistants and on successful completion of the training they have been considered for

promotion. Therefore, I find nothing illegal with the impugned orders.

In the result, the writ petition fails and it is dismissed.

17th July, 2007. K.BALAKRISHNAN NAIR,JUDGE.

Nm/